

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR335
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JAMES E. SMITH, III,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 42). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the quantity of controlled substance attributable to the Defendant in ¶ 24 and the base offense level 38. The plea agreement recommends a base offense level of 34 based on a drug quantity of at least 500 grams but not less than 1.5 kilograms of cocaine base, i.e. crack cocaine. The Court’s tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 34.

The objection to information under “Other ID#” on page 2 of the PSR is denied as untimely and because the objection does not affect the sentencing guideline range.

IT IS ORDERED:

1. The Court’s tentative findings are that the Defendant’s objection to information under “Other ID#” on page 2 of the PSR is denied, and the objection to the drug quantity and the base offense level in ¶ 24 is granted;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 30th day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge